

THE HONORABLE JAMES L. ROBART

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JERZY A. JASNOSZ,

Plaintiff,

v.

JD OTT COMPANY, INC.,

Defendant.

Case No. C09-952JLR

J.D. OTT'S MOTION FOR COSTS
PURSUANT TO FRCP 68

NOTE ON MOTION CALENDAR:
JUNE 24, 2011

Pursuant to FRCP 68 and W.D. Wa. LCR 54(d), Defendant J.D. Ott Company, Inc. ("JD Ott") moves for the Clerk of this Court to order Plaintiff Jerzy A. Jasnosz to pay the \$485.76 in costs J.D. Ott incurred after it made an offer of judgment to Plaintiff, which he did not accept.

Under Federal Rule of Civil Procedure 68, if a defendant makes an offer of judgment, the plaintiff rejects the offer of judgment, and the judgment the plaintiff finally obtains is not more favorable than the offer of judgment, the plaintiff must pay the costs incurred subsequent to the offer of judgment.¹ "The award is mandatory; Rule 68 leaves no room for the court's discretion."² The term "costs" in Rule 68 is intended to refer to all costs properly

¹ Fed. R. Civ. Pro. 68; *United States v. Trident Seafoods Corp.*, 92 F.3d 855, 860 (9th Cir. 1996) (citing *Liberty Mut. Ins. Co. v. EEOC*, 691 F.2d 438, 442 (9th Cir. 1982)).

² *Id.*

J.D. OTT'S MOTION FOR COSTS PURSUANT TO FRCP
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1 awardable under the relevant substantive statute.³

2 In this case, J.D. Ott made Plaintiff an Offer of Judgment in the amount of
3 \$21,000.00 more than fourteen days before the date set for trial, on April 1, 2011.⁴ Plaintiff
4 did not accept the Offer of Judgment.⁵ At trial, the jury returned a verdict in favor of
5 Plaintiff on his retaliation claim and awarded him damages in the total amount of \$0.00.⁶
6 Since the judgment Plaintiff ultimately obtained was not more favorable than the unaccepted
7 offer of judgment, Plaintiff must pay the costs incurred since after the offer of judgment was
8 made on April 1, 2011.

9 Therefore, pursuant to FRCP 68 and W.D. Wa. LCR 54(d), J.D. Ott moves for the
10 Clerk of this Court to tax the following costs and disbursements:

- 11 1. Statutory docket fee for trial⁷. \$ 20.00
- 12 2. Costs for exemplification and copies of papers
13 necessarily obtained for use in the case⁸. \$350.76
- 14 3. Witness attendance fees⁹. \$ 80.00
- 15 4. Witness parking fees¹⁰. \$ 35.00

16 **TOTAL COSTS: \$485.76**

17 These costs are supported by the *Declaration of Stephanie P. Berntsen in Support of*
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19 ³ *Trident Seafoods*, 92 F.3d at 860 (citing *Marek v. Chesny*, 473 U.S. 1, 9, 87 L. Ed. 2d 1, 105 S. Ct. 3012 (1985)).

20 ⁴ Declaration of Stephanie P. Berntsen in Support of J.D. Ott's Motion for Costs Pursuant to
21 FRCP 68 (*Berntsen Decl.*), ¶ 2 and Ex. A.

22 ⁵ *Berntsen Decl.*, ¶ 3.

23 ⁶ *Berntsen Decl.*, ¶ 2; Dkt #114.

24 ⁷ 28 USCS § 1920(5); 28 U.S.C. § 1923(a); *Moore v. Hughes Helicopters, Inc.*, 708 F.2d
25 475, 486 (9th Cir.).

26 ⁸ 28 U.S.C. § 1920(4); *Alflex Corp. v. Underwriters Laboratories, Inc.*, 914 F.2d 175, 177-
178 (9th Cir. 1990).

⁹ 28 USCS § 1821(b).

¹⁰ 28 USCS § 1821(c)(2).

1 *J.D. Ott's Motion for Costs Pursuant to FRCP 68*, and exhibits, being filed herewith. They
2 are true and accurate, and were necessarily incurred for the purposes of defending against the
3 allegations raised against J.D. Ott in this proceeding.

4 Signed this 7th day of June, 2011.

6 SCHWABE, WILLIAMSON & WYATT, P.C.

8 By: /s/ Stephanie P. Berntsen
9 Stephanie P. Berntsen, WSBA #33072
10 Farron D. Lennon, WSBA #40559
11 *Attorneys for Defendant*
12 *JD Ott Company, Inc.*
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J.D. OTT'S MOTION FOR COSTS PURSUANT TO FRCP
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CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of June, 2011, I caused to be served the foregoing J.D. OTT'S MOTION FOR COSTS PURSUANT TO FRCP 68 on the following party at the following address:

Jerzy A. Jasnosz
1756 NW 61st St.
Seattle, WA 98107

by:

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U.S. Postal Service, ordinary first class mail
U.S. Postal Service, certified or registered mail,
return receipt requested
hand delivery
facsimile
electronic service
other (specify) Available for Pick Up at Schwabe Williamson & Wyatt

/s/ Stephanie P. Berntsen

CERTIFICATE OF SERVICE - 1

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